

Sir John Lambert, Bart. Appellant.
Sir Daniel o' Carroll, Kt. Respondent.

The Respondent's CASE.

THE Respondent and *John and Reney Carroll*, his Brothers, Merchants in *Paris*, in the Year 1720, being acquainted with *Sir John Lambert*, deceas'd, the Appellant's late Father, who was then in Partnership with the Appellant, they desired the said *Sir John Lambert*, deceas'd, to buy for them 1500 *l. South Sea Stock*.

THAT in pursuance of such Request 1500 *l. South Sea Stock* was purchased for and in the Name of the Respondent, but remained in the Hands of the said *Sir John Lambert*, deceas'd, together with a Note of *Lord Londonderry* for 90,000 *Livres*, payable to the Respondent, which he deposited with the said *Sir John Lambert*, the Father, as a collateral Security for the Prime Cost of the said Stock; and the Respondent and his Brothers, the Merchants at *Paris*, order'd *Sir John* to give them an Account what the said 1500 *l. Stock* cost, together with the Commission and Brokerage, and all Expences relating thereto; and directed him to draw Bills on several of their Correspondents for the same, which amounted to 5222 *l. 4 s. 1 d.* which he accordingly did, and the said Bills were honourably paid.

Respondent's
Contract
with Duke
of Portland.

THAT the Respondent on the 23d of *June*, 1720, contracted with the Duke of *Portland* for Sale of the said 1500 *l. Stock* for 13,675 *l.* who transferred to the Appellant and his said Father, being Partners, 500 *l. South Sea Stock*, and on the 26th of *August* following, by the Respondent's Direction, they transferred the 1500 *l. Stock* with the Midsummer Dividend to *Conrade de Gols*, who paid into their Hands 13,875 *l.* and no more; so that the Profits of the said Stock amounted to about 8000 *l.* which by the Consent of the Respondent and his Brothers was to be divided, one Moiety to the Respondent, and the other Moiety to *John and Reney Carroll*.

THAT the Appellant, or his said Father, his then Partner, having also receiv'd 1750 *l.* and upwards of the said *Lord Londonderry's* Note for 90,000 *Livres*, the Respondent order'd the Appellant, or his said Father, to pay to *Fergus Farrel*, a Merchant in *London*, 1500 *l.* only, and no more, out of the Money in their Hands, towards discharging Bills that were drawn on him by the Respondent's Uncle *Crean*, a Banker at *Madrid*, for 3000 *l.* and the Appellant; or his said Father expressing their many Obligations to *Crean*, promised to advance the other 1500 *l.* in Satisfaction of the said Bills for 3000 *l.* but instead thereof they advanced 1500 *l.* towards discharging of other Bills drawn on *Farrel*, by one *Elcoma*, at *Amsterdam*, without any Order or Consent of the Respondent.

THAT the said *Lamberts* having in their Hands the 1750 *l.* of the *Lord Londonderry's* said Note, and being apprehensive that the Respondent might draw that Money out of their Hands, they proposed to buy for him 500 *l.* first *South Sea* Subscription, and to draw on Mr. *Crean* and others for what Money they should advance for the Purchase thereof, above the said 1750 *l.* and before any Re-draughts could come back, to sell it again for much more than it cost, whereby a very considerable Profit would accrue to the Respondent; and thereupon (as the Appellant and his Father pretended) they purchased about the 2d of *June*, 1720, 500 *l.* First Subscription, for which they charged the Respondent (including their Brokerage and Commission Money) 3082 *l. 11 s. 6 d.* and they accordingly drew Bills on *Crean* and others for the Sum of 1541 *l. 5 s.* being the Remainder above 1750 *l.* they had receiv'd of *Lord Londonderry's* Note.

THAT the Appellant and his Father continuing in Partnership together, about the first of *July* following, he sold to the Respondent two Third Subscriptions in the *South Sea Company*, which he affirm'd was bought of one *Godin*, though in Fact those Subscriptions belong'd to the said Partnership, and *Godin's* Name was only made use of in Trust for them, and to serve their Purpose; upon which, two Contracts were entred into between the said *Godin* and the Respondent, whereby it was agreed, that each of them should deposite in the Hands of the Appellant's Father a 500 *l.* First Subscription for Performance of each of their Contracts; and in Case either Person failed, he was to sell such Person's Subscription to satisfy any Damage he should sustain thereby.

THAT

THAT afterwards the Respondent made several Applications to the Appellant's Father to sell the said 500*l.* First Subscription if he had really bought any such, which at that Time would have yielded above 3500*l.* but could never prevail on him so to do, or to shew him the same, or give him the Number thereof, or to come to any Account whatsoever, 'till about the fifth of *October* following, when the Appellant's late Father drew out an Account which was very short and imperfect; and taking Advantage of the Respondent's Ignorance in Accounts, prevail'd on him to sign it, and some Days after, the Appellant and his Father, then Partners, sent the Respondent a Copy thereof sign'd by them; whereby the Ballance due to the Respondent, was about 700*l.*

THAT the Respondent afterwards shewed the said Account to several Merchants, who found the same to be very erroneous and unjust; whereupon, he applied to the Appellant and his Father, to have the same rectified, but they insisted it was a stated Account, and the Respondent should be bound thereby; whereupon the Respondent exhibited two Bills in the High Court of Chancery, one in *Hillary* Term, 1721, against the Appellant's Father, deceas'd, and *Farrel*, to be paid the 1500*l.* which had been misapply'd towards Payment of *Elcoma's* Bills instead of the Respondent's Uncle *Crean's* Bills as he directed; to which, they put in their Answers, and both of them confess'd the Misapplication of the 1500*l.*

The other Bill was exhibited in *Trinity* Term following, against the Appellant and his Father, and *John* and *Reney Caroll*, to have the Account open'd, and to be paid the Sum of 3032*l.* 11*s.* 6*d.* and to have his Moiety of the 1500*l.* Stock; and that the Appellant and his Father might come to a General Account for all Sums receiv'd by them; to which Bill the Appellant and his said Father put in their Answers together, and confessed the buying the 1500*l.* *South Sea* Stock, which with Commissions and Brokerage came to 5222*l.* 4*s.* 1*d.* for which they drew Bills, which were duly paid; and that they also receiv'd of the Duke of *Portland* 13,675*l.* by the Respondent's Order, and they also admitted the Contracts with *Godin*, but it no where appear'd that *Godin* had made the like Deposit which the Respondent did of 500*l.* First Subscription for the Performance thereof; and the Respondent afterwards having amended his Bill, the Appellant, and his Father, and *Godin* confess'd by their Answers likewise, that the two Third Subscriptions belong'd, one Part to *Godin*, and the other to the Appellant and his Father.

BOTH Causes being at Issue, and Witnesses examined on both Sides, they came on to be heard before his Honour the Master of the Rolls the third of *December* 1722, who referr'd it to Master *Lightboun*, to take an Account of the Dealings and Transactions between the Respondent and the Appellant, and his Father and *Godin*, and if any Difficulties should arise, to report the same Specially; and the Account of the 5th of *October* 1720, was to stand as a stated Account as to all the *Items* therein, but with Liberty for the Respondent to falsify or surcharge the same: And as to the 1500*l.* which the Respondent order'd the Appellant or his Father to advance out of the Monies in their Hands, towards Payment of the 3000*l.* Bill drawn on *Farrel* by the Respondent's Uncle *Crean*; the Master was to examine, whether that Money was apply'd to discharge *Crean's* Bills, or the Bills drawn by *Elcoma*, and to State how he found the same; and what the Master should find due from either Party to the other, was Decreed to be paid, and the Consideration of Costs was reserved 'till after the Master's Report; and the Respondent's Bills, as against the Defendants, the *Carrolls* and *Farrels*, were to stand dismiss'd, with Costs to be taxed.

THAT soon after this Order was passed, Sir *John Lambert*, the Appellant's Father, died, who left Dame *Magdalen*, his Widow, sole Executrix, against whom the Respondent brought his Bill of Revivor, and all the said Proceedings were revived accordingly. That after several Attendances before the Master, on the 18th of *July*, 1723, the Appellant obtained an Order on a Motion (bounded upon an Act of Parliament made in the 7th Year of his late Majesty's Reign, touching the late Director's Estate) that the Bills and Proceedings in those Causes, as far as they related to the Lady *Lambert* as Executrix to her late Husband, should be dismissed; but the Appellant being in Partnership with his late Father, and equally concerned in Interest in the said Transactions, as appeared by the Pleadings and Proofs in the said Cause, the said Bills were retained against him.

Master's Report, March 23, 1723.

THAT after 50 several Attendances, and an expensive Litigation before the said Master, and hearing the Appellant's Counsel, who was the most Part present; on the 23d of *March*, 1723, the Master signed a Draught of his Report, which was Special throughout; to which Report, the Appellant, to protract the Time for the Payment of what had been reported due to the Respondent, took six Exceptions and the Respondent was thereby obliged to take three Exceptions, all which, together with the Special Matter of the Report, were argued before the Lord Chancellor on the 26th of *July*, 1724, who was then pleased to over-rule the Appellant's first Exception: And his second Exception being, for that the said Master had reported that a great Part of the Deceased Sir *John Lambert's*

Lamber's-Answer, referred to by the Appellant (then the Defendant in the said Cause) appeared to the said Master equally to contradict his own and his Son the Appellant's Letter to *John* and *Reney Carral* of the 6th of *June*, 1720, and a Letter to *Crean* and Company of the 29th of *September*, 1720; and also their Letter to *John Carroll* of the 7th of *October*, which Letters being wrote soon after the Transaction, and before any Dispute arose thereupon, were satisfactory Proofs that the Respondent, the then Plaintiff, directed the 1500 *l.* to be advanced out of his own Cash, then in the Appellant's Hands, towards discharging *Crean's* Bills, and that the *Lamberts* were both of them fully satisfied thereof when they wrote the said Letters; upon which Exception, and upon the Appellant's 3d and 4th Exceptions, his Lordship declared that there appeared to have been a Fraud put upon the Respondent by the Appellant and his Father, to get their own Bills paid; and therefore the Appellant ought not in the Account to be allowed the said 1500 *l.* and Ordered, That the Master should review his Report, and allow the Respondent the 1500 *l.* accordingly. As to the 5th Exception, relating only to the Sum of 83 *l.* 6 *s.* 8 *d.* his Lordship was pleased to allow the same; but over-ruled the Appellant's 6th Exception. And as to the Respondent's first Exception to the said Report, his Lordship declared that the Appellant, then Defendant, ought to answer for the said 500 *l.* first Subscription to the Respondent, the then Plaintiff, according to the current Price of the said Subscriptions, when the said Sir *John Lambert*, deceased, was desired to sell it, as ascertained by the said Master, and ordered the same accordingly; but the said Appellant is to stand in the Place of the Respondent, and to receive back from the Trustees of the Estates of the late *South Sea* Directors, so far as the Estate of the late Sir *John Lambert* is thereby made liable to the Respondent's Demands; and it appearing by the said Report, that the Appellant, and his Father Sir *John Lambert*, deceased, were considerably indebted to the Respondent, who had been at great Expence for Recovery of his Demands; his Lordship ordered that the Respondent should have his Costs of Suit which were reserved upon the former Hearing, to be paid by the Appellant, which the Master was ordered to Tax, and which Costs were afterwards taxed but at 214 *l.* whereas the Respondent expended above 1000 *l.* besides the Trouble of several Years vexatious Litigation.

THAT this Order was made so long ago as the 20th of *July*, 1724; and pursuant thereto, the Respondent's Costs were taxed at 214 *l.* and the Appellant in Obedience to the said Order, paid the Respondent what appeared due to him, together with the said Costs, which he would not have submitted to in Case he or his Council had then thought he had any just Reason to appeal therefrom.

BUT after five Years Acquiescence under the said Order, and paying the said Money to the Respondent, the Appellant, the last Session of Parliament, thought fit to appeal from so much of the said Order as relates to his answering to the Respondent the Price of the 500 *l.* first Subscription, and also the said Costs: And prays that the Sum of 3500 *l.* being the Money allowed to the Respondent as the Value of the said Subscription and the said Costs, may be paid back to him by the Respondent.

THAT the Respondent humbly insists the said Order is just, and that there is no Foundation for this Appeal.

- Reason I. FOR that the Appellant and his Father were then Partners together, and equally concerned in Interest, and had exprefs Orders from the Respondent to sell the said Subscription, which they ought to have done; and the Appellant is charged with no more than the current Price of the said Subscription at the Time the same was or ought to have been sold.
- II. FOR that it manifestly appears from the Proofs taken in the Cause, and as the Lord Chancellor has declared in his said Order, that the Appellant and his Father, who were Partners, had put a Fraud upon the Respondent, as their own Letters to the *Carrolls* and *Crean*, and their Answer upon Oath, plainly contradicted each other.
- III. FOR that the Respondent lost above 1000 *l.* Interest-Money, for four Years; during which Time, the said Sir *John Lambert* the Father, and the Appellant his Son, kept him out of his Money, no Part of which was allowed the Respondent by the said Order; and the greatest Part of the Costs of Suit which the Appellant complains of, was expended in Order to recover the 1500 *l.* in which Transaction there appears so much Fraud that the Appellant has not thought fit to appeal against the Payment of that Sum.

Wherefore, and for the Reasons mentioned in the said Master's Report, and in Lord Chancellor's Order, the Respondent humbly hopes that the said Proceedings and Order, and subsequent Proceedings thereon shall be affirm'd, and that the Appellant's Appeal shall be dismiss'd with Costs.

P. York,
C. Talbot,

Sir John Lambert, Bart. Appellant.
Sir Daniel O'Carroll, Kt. Respondent.

The Respondent's CASE.

To be heard at the Bar of the House of
Lords, the Fifteenth Day of February,
1730.

The Decree of the Court of Chancery Complain'd of
was Affirm'd.